Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection	)	
of Regulatory Fees for	)	MD Docket No. 96-186
Fiscal Year 1997	)	

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC") on behalf of Southwestern Bell Telephone Company ("SWBT") submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM")[1] regarding regulatory fees for Fiscal Year 1997.

I. THE TRANSITION TO COST-BASED FEES SHOULD NOT HAVE AN UNFAIR, DISPROPORTIONATE IMPACT ON CERTAIN REGULATEES.

In the NPRM, the Commission proposes for the first time to adopt fees based on the cost of regulating the various services.[2] The Commission proposes to phase in the increased cost-based fees in a manner that supposedly avoids a dramatic increase in the fees applicable to any service.[3] The Commission requests comments on its proposed method of making the transition to cost-based regulatory fees using a 25% revenue ceiling.[4] The Commission's method of limiting the increase in the amount of fees causes certain classes of regulatees to bear an unfair,

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[1] FCC 97-49, adopted February 14, 1997 and released March 5, 1997.

[2] NPRM, ¶ 7.

[3] NPRM, ¶¶ 7, 10.

[4] NPRM, ¶ 18.

disproportionate share of the increased amount that Congress required the Commission to collect.

For example, in the case of interstate telephone service providers (i.e., IXCs, LECs, CAPs, etc.), the Commission proposes a fee factor of 0.00119 for Fiscal Year 1997.[5] This factor is 21.4% higher than the factor of 0.00098 adopted for Fiscal Year 1996. This proposed fee factor would result in a $684,000 or 35% increase in SWBT's regulatory fees for Fiscal Year 1997, compared to Fiscal Year 1996. Congress only required that the Commission collect $26 million or 21% more than in Fiscal Year 1996.[6]

A 35% increase in SWBT's regulatory fees is clearly a dramatic increase. The result of the Commission's method is that some of those that have overpaid the most in the past bear a greatly disproportionate share of the costs attributable to services that are affected by the 25% revenue ceiling.

While the Commission estimates that absent any fee changes it would collect $58.5 million from interstate telephone service providers, it also estimates that the actual regulatory costs attributable to interstate telephone service providers is $55 million. An entirely cost-based calculation would yield a regulatory fee factor of only .0009167. Had the proposed regulatory fees been entirely cost-based, SWBT's 1997 regulatory fee factor would have been lower than the current factor of .00098. In that case, SWBT's total regulatory fees would have increased by $73,000 or 4%, instead of $684,000 or 35%. The 4% increase in a purely cost-based fee would be due mainly to the growth in SWBT's revenue base. Given that the fees for this fee category

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[5] NPRM, Attachment H, ¶ 31.

[6] NPRM, ¶ 2.

are already substantially above cost, a 4% increase would represent a fair share of the total increase required by Congress. In contrast, a 35% increase is grossly disproportionate to the regulatory costs attributable to SWBT's fee category.

The Commission should either abandon a phase-in approach or adopt changes to its method of phasing in cost-based fees which avoids placing an unfair burden on certain classes of regulatees.

Another conceivable approach would be uniform increases in the fees of all regulatees. Had the Commission uniformly increased fees for all regulatees, the interstate telephone service providers would have been responsible for about $65 million, instead of $70 million, in total fees. In that case, the regulatory fee factor would have been 0.001095 and this class would have had an 11.74% increase in regulatory fees. Such a method would have been more equitable than the method chosen by the Commission, although still unsatisfactory for the reasons explained below.

SWBT and other interstate telephone service providers should not be required to pay such a grossly disproportionate share of the increased regulatory fees that Congress required the FCC to collect. The transition to a cost-based system should not penalize certain classes of regulatees by abruptly increasing their fees, when the cost of regulating that class is substantially less than the fees the Commission would have collected absent any increase at all.

The Commission's method of phasing in cost-based regulatory fees is unfair and flawed. Regulatees that are paying the highest fees are unfairly saddled with the increased costs of those who have paid the least relative to their attributable costs. Also, in the process of phasing in the cost-based system, one would expect fees to move closer to costs. Instead, we see an increase in the disparity in some fee categories. In the case of interstate telephone service providers, the new fees are about $5 million dollars farther from the estimated costs than the old fees.[7] This could hardly be characterized as a transition toward a cost-based system.[8] Under the Commission's cost-based method, certain regulatees' costs will move farther away from costs each year there is an adjustment.[9]

The Commission claims that its proposed method will result in fees "which more closely reflect [its] costs of regulating a service."[10] According to the Commission, this proposed method will "reduce fees for services whose regulatory costs have declined . . . in order to begin eliminating the disparities . . . between a service's costs and fees . . ..."[11] However, in the case of LECs and other interstate telephone service providers, the proposed method does not "close the gap between actual costs and fees designed to recover those costs,"[12] as the Commission claims. Instead, the proposed method widens the gap significantly for this large category of regulatees.

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[7] NPRM, Attachment E.

[8] NPRM, ¶¶ 7, 10, 17.

[9] The Commission's method of phasing in cost-based fees also discriminates against interstate telephone service providers compared to the second largest fee category, Cable Systems. While Cable Systems also overpaid significantly compared to their costs, their regulatory fees would move about $4 million closer to costs under the Commission's proposal.

[10] NPRM, ¶ 7.

[11] NPRM, ¶ 10.

[12] NPRM, ¶ 17.

SBC recommends that the Commission re-examine its decision to use a revenue ceiling to phase in cost-based regulatory fees. However, if the Commission determines that a gradual transition to cost-based fees is unavoidable, the Commission should outline the future steps in this transition plan that will take it all the way to its objective. Any method the Commission selects should assure a rapid transition to cost-based fees and avoid leaving some regulatees behind. In particular, the Commission, at a minimum, should consider increasing the revenue ceiling above 25%, especially for those regulatees whose fees are substantially below their attributable costs.

II. THE CALCULATION OF FEES DISCRIMINATES AGAINST LECS, RELATIVE TO IXCS, RESELLERS AND OTHER NON-FACILITIES-BASED CARRIERS.

Another flaw in the funding mechanism exists in the guidelines for interstate telephone service providers' calculation of fees. With one significant exception, these providers' fees are based upon their proportionate share of gross interstate revenues.[13] However, interexchange carriers ("IXCs"), resellers and other non-facilities-based carriers are allowed to deduct from their gross interstate revenue all payments made to underlying common carriers for telecommunications services and facilities.[14] This practice disproportionately increases the fees for LECs compared to IXCs and other non-facilities-based carriers. LECs are required to use gross interstate revenues while IXCs and other non-facilities-based carriers are allowed to use a

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[13] NPRM, Attachment H, ¶ 31 (citing Telecommunications Relay Services, 8 FCC Rcd 5300 (1993) ("TRS Third Report & Order")).

[14] TRS Third Report & Order, ¶ 16; 47 C.F.R. §64.604(c)(4)(iii)(A).

net figure. Unlike IXCs and other non-facilities-based carriers, LECs are not allowed to deduct any of the costs of their underlying telecommunications services and facilities.

The NPRM states that this exception is intended to "avoid imposing any double payment burden on resellers."[15] However, any double payment burden would not be imposed solely on resellers. If all providers used gross interstate revenues, LECs would pay fees based on access charges. IXCs would also pay fees based on those same access charges, but only to the extent reflected in the IXCs' retail rates. Therefore, any double payment burden would be borne by both the LECs and the IXCs and other providers paying access charges. It is unfairly biased against the LECs to eliminate the double payment burden by only allowing IXCs and other non-facilities-based carriers to deduct underlying facilities costs from their gross interstate revenues.[16]

The Commission should adopt a different method that avoids a double payment burden on both the LECs and the IXCs and other non-facilities-based carriers. Specifically, the Commission should allow each group (i.e., the LECs and the IXCs and other non-facilities-based

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[15] Id., ¶ 9 (emphasis added).

[16] The method proposed in this NPRM is inconsistent with the approach adopted in the Telecommunications Relay Services decision cited in the NPRM's discussion of interstate telephone service providers' fees. Telecommunications Relay Services("TRS"), 8 FCC Rcd 5300 ¶16 (1993), cited in NPRM, Attachment H, ¶31. In the TRS decision, the Commission required all providers to use gross interstate revenues without any deductions for the costs of underlying facilities. While the TRS method is not ideal, at least it does not discriminate against one type of interstate telephone service provider.

carriers) to deduct a prorated share of the total access charges. The Commission should allow LECs to deduct at least half of their total access charges.[17]

III. CONCLUSION

Instead of a gradual transition to cost-based regulatory fees, the Commission should adopt fees which are entirely cost-based from the outset. Further, if the Commission determines that a transition is unavoidable, the Commission should not impose an unfair share of the burden of increased fees on those who have been overpaying the most compared to their attributable regulatory costs.

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[17] In doing so, the Commission should recognize that the double payment burden is greater on LECs than on IXCs because IXCs' retail rates are less likely to fully reflect the underlying facilities costs (i.e., the access charges paid to the LECs).

Finally, the Commission should remedy the disparity inherent in the Commission's decision to allow IXCs, but not LECs, to deduct the costs of underlying facilities from their interstate gross revenues.

Respectfully submitted,

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